

**TESTIMONY OF ROBERT R. LOUX, EXECUTIVE DIRECTOR
NEVADA AGENCY FOR NUCLEAR PROJECTS, OFFICE OF THE GOVERNOR
AT THE NRC LICENSING HEARING FOR THE PROPOSED PRIVATE FUELS
STORAGE, L.L.C. INTERIM SPENT FUEL STORAGE FACILITY
SALT LAKE CITY
JUNE 23, 2000**

The State of Nevada has been actively involved with issues surrounding the management, transportation, storage, and disposal of spent nuclear fuel and high-level radioactive waste for over two decades. During that time, we have acquired considerable experience with both the technical/programmatic aspects of spent fuel management and the regulatory/licensing environment.

Nevada has a strong interest in the NRC's licensing proceeding for the proposed Private Fuel Storage (PSF) facility, since this is the first time in recent years that an away-from-reactor, independent storage facility for commercial spent fuel has been proposed for construction. The manner in which the proceedings are carried out and the degree to which interveners' and the public's issues and concerns are addressed will have a direct bearing on future licensing processes involving spent fuel storage and/or disposal. This is especially relevant to Nevada, where the U.S. Department of Energy is attempting to move ahead with a proposed high-level radioactive waste repository facility over the State's objections, and where an already skeptical public believes NRC is inappropriately collaborating with DOE to facilitate licensing of an unacceptable and unsafe site.

Nevada strongly objects to a process where the rules of evidence appear arbitrary and changeable; where NRC lawyers and staff serve as advocates and, literally, surrogates for the applicant; where interveners do not have complete access to crucial technical information prior to the hearing; where essential technical and design information is waived or altered at the last minute; where proceedings are closed to the public and where decisions are made regarding which issues will be open for discussion and which will be decided behind closed doors; where fundamental adjudicatory requisites such as full and meaningful discovery, rules of evidence, cross-examination of witnesses, and the like are implemented selectively; and where NRC is permitted to treat the State and the public as unequal and less important participants.

How can the public have any confidence at all in a system that embodies the fundamental contradiction of having NRC's own staff represent the interests of the party seeking a license from the NRC?

How can the integrity of the process be served by permitting the granting of exemptions from fundamental technical and design requirements simply on the basis of "assurances" from the applicant of future performance or on the unsupported opinions of the NRC staff?

The current licensing process is fundamentally and fatally flawed. It is a stacked deck, where the applicant and its NRC advocates appear to simply go through the motions of a “public” proceeding, but where the outcome has been assured.

NRC staff have confirmed, in fact, confirmed that the Commission has never actually denied a license application, except in one case for failure to consider environmental justice issues. That, at least, is the perception from the standpoint of the public and knowledgeable external parties such as the State of Nevada.

The approach to licensing NRC is pursuing with respect to the PFS application harkens back to the days when matters involving “atomic energy” were seen as too important, secret, and complicated for the non-initiated and the public to be afforded meaningful involvement. It is also reminiscent of the culture of secrecy surrounding earlier AEC and DOE nuclear activities - a culture that lead to widespread harm not only to the public but also to the credibility of the entire federal nuclear establishment.

NRC should be seeking to build public confidence with respect to facilities for the storage and disposal of commercial spent nuclear fuel. The current licensing process does little or nothing to promote such confidence.

What would be needed to remedy this situation? For starters, NRC must step back from its applicant advocacy role and become a truly neutral arbiter of fact.

The licensing proceeding itself and the rules by which it is conducted must be highly structured and formal, with clear rules of evidence, full discovery, and strict limitations on admissibility of changes to the license application or facility design without adequate time and opportunity provided for interveners to review such changes and prepare for addressing them in the hearing.

It is not unreasonable for the public to expect that, when an applicant approaches NRC for something as significant and potentially as harmful to health, safety, and the environment as a license to construct a centralized storage facility for spent nuclear fuel, NRC will insist that there be a complete and final facility design and operating system contained as the central element of the license application. There is no justification for beginning the licensing process or awarding a license if the applicant has not provided complete and final information on the facility it is proposing. Exemptions, extensions, and information-to-be-provided-later have no place at the license application stage. If the applicant is not prepared with final designs and information, NRC should refuse to consider the application.

The public also expects that there will be full and open disclosure of all information pertaining to the operation of such a facility - not just the information that NRC and the applicant (in this case PFS) deem appropriate. Withholding important information pertaining to financing, leasing and operating agreements, transportation plans and risks, and other matters is wholly unacceptable and serves to heighten the public’s distrust of NRC and the entire nuclear facilities

regulatory process.

A credible NRC licensing proceeding must also address the issue of need for and appropriateness of a central interim storage facility for spent fuel. It is not enough to simply accept PFS's assurances that such a facility is, in fact, necessary. Granting this license will have major national consequences that extend far beyond the boundaries of the Goshute Reservation, where the interim facility is proposed, and even farther beyond the locations of the various nuclear power plants from which the spent fuel will be shipped. It will initiate the largest, longest, and most intensive spent fuel shipping campaign ever conducted.

Nevada contends that a central interim storage facility - especially one located in the west, thousands of miles from the most of the country's power reactors - is not needed; that there is ample space at reactor locations for storing spent fuel on-site; and that, by considering PFS's application for a facility, NRC is exposing thousands of communities around the nation to transportation risks and impacts that are not being assessed and that are wholly unnecessary.

The only possible justification for even considering an interim storage facility in the west is the assumption that Yucca Mountain will prove suitable as a repository site. Such an assumption, in Nevada's view, is entirely unfounded. We do not believe that Yucca Mountain can be licensed as a repository. The site is fundamentally and fatally flawed. Without wholesale dismantling of radiation protection and health and safety requirements, Yucca Mountain cannot be shown to meet standards required for waste isolation. Nevada intends to vigorously contest, using any means necessary, any attempt to recommend the Yucca Mountain for development as a repository or to license a disposal facility at the site. For the purposes of the PFS application, NRC must assume that Yucca Mountain will not be developed as a spent fuel repository.

Let me emphasize again that the State of Nevada strongly objects to the way NRC appears to be carrying out this proceeding and to the precedent that is being set for any possible future proceeding involving a proposed repository. Nevada intends to take necessary measures to assure such a process will not be utilized for Yucca Mountain.

Nevada's position is simple: The licensing process and proceedings historically used for reactor licensing cannot be utilized to license permanent or semi-permanent spent fuel disposal or storage facilities. The public demands and deserves more.